

REMARKS

Upon entry of this amendment, claims 1-32, 34, 35 and 37-43 are pending. Claims 1-4, 7, 9-10, 13, 16-17, 23-24, 27-32, 34-35 and 37-43 have been amended. No new matter was added by this amendment. Claims 33, 36 and 44-66 have been canceled without prejudice. The Applicants reserve their right to prosecute these claims in a divisional or continuation application. Reconsideration and allowance of the pending claims are requested.

The Applicants gratefully acknowledge that the rejections under obviousness double patenting and 35 U.S.C. §102(a) have been withdrawn.

The Amendment

The title has been amended to more clearly reflect the invention as requested by the Examiner.

Claims 1, 16, 17, 23, 24, 27, 28, 29, 30, 34, 35 and 37-40 have been amended to correct for proper antecedent basis as requested by the Examiner. Claims 3, 4, 7, 9, 10, 13, 31 and 41-43 have been amended to provide proper Markush terminology. Claims 1 and 2 have further been amended to clarify the claim language. Support for these amendments can be found, for example, in paragraph [0046], [0059], [0060] and [0069]. Claim 32 has been amended to correct the claim language from "may be" to "is".

Claim Rejections Under 35 U.S.C. §112

Claims 1-32, 34, 35 and 37-43 have been rejected under 35 U.S.C. §112, second paragraph, as being allegedly indefinite. To the extent that the rejection applies to the claims as amended, it is respectfully traversed.

The Examiner indicates that there are many instances of lack of antecedent basis. The claims have been amended accordingly, *i.e.*, claims 1, 16, 17, 23, 24, 27, 28, 29, 30, 34, 35 and 37-40 have been amended to correct for proper antecedent basis (*supra*). Further, the Office Action

indicates that all occurrences of "chosen from" denote improper Markush terminology. Thus, claims 3, 4, 7, 9, 10, 13, 31 and 41-43 have been corrected accordingly (*supra*).

The Examiner also indicates that in claim 13, the labeled substrate is incorporated into sugars, fatty acids, proteins and DNA and measured which is allegedly inconsistent and fails to further limit claim 1. Claim 1 has been amended to remove reference to incorporation such that claim 13 now further limits claim 1. Claim 13 has further been amended to clarify that the additional step includes ^2H incorporation and " ^2H " incorporation ratio. According to the Examiner, the claims must be clear regarding what is administered, what is determined and what is correlated. Applicants believe that claims 1 and 13 are clear and definite in light of the amendment presented herein.

As indicated, claim 34 allegedly lacks antecedent basis for "said metabolism determination". Claim 35 has been corrected to recite "said determining of said metabolism" to provide proper antecedent basis.

In light of the above amendments, it is respectfully requested that the rejection of claims 1-32, 34, 35 and 37-43 under 35 U.S.C. §112, second paragraph, be withdrawn.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection

with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 416272005200. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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